



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 5, 1998

Ms. Eileen C. Begle
Assistant County Attorney
Harris County
1001 Preston, Suite 634
Houston, Texas 77002-1891

OR98-0356

Dear Ms. Begle:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 112820.

The Harris County Attorney's Office (the "county attorney") received an open records request for all of the county attorney's records pertaining to the charges of injury to a child and interference with child custody that have been filed against a named individual. You explain that criminal charges are currently pending in both causes against the individual. You contend the requested documents, a representative sample of which you have submitted to this office, are excepted from required public disclosure pursuant to sections 552.101 and 552.103 of the Government Code.¹

Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 261.201(a) of the Family Code provides:

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision No. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect [of a child] made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, *the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.* [Emphasis added.]

You have not informed this office of any rules the county attorney has adopted that would permit access to the records pertaining to the child abuse prosecution. To the extent that the requested information pertains to an investigation of injury to a child, this office concludes that the county attorney must withhold those records in their entirety pursuant to section 261.201 of the Family Code.

Although you also contend that the county attorney's records pertaining to the interference with custody charges are also confidential under section 261.201 of the Family Code, we do not believe that such charges constitute the "abuse or neglect" of child for purposes of chapter 261. We therefore must address the applicability of section 552.103 of the Government Code to those particular records.

To secure the protection of section 552.103, a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation to which the governmental body is a party. Open Records Decision No. 588 (1991) at 1. In this instance you have made the requisite showing that the requested information relates to pending litigation for purposes of section 552.103. The requested records may therefore be withheld.

In reaching this conclusion, however, we assume that the criminal defendant or her attorney has not previously had access to the records at issue; absent special circumstances, once information has been obtained by all parties to the litigation, *e.g.*, through discovery or otherwise, no section 552.103 interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). If the criminal defendant or her attorney has seen or had access to any of the information in these records, there would be no justification for now

withholding that information from the requestor pursuant to section 552.103. We also note that the applicability of section 552.103 ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in cursive script, appearing to read "Kay Hastings".

Kay Hastings
Assistant Attorney General
Open Records Division

KHH/RWP/rho

Ref.: ID# 112820

Enclosures: Submitted documents

cc: Mr. James Stafford
1512 Alabama
Houston, Texas 77004-3936
(w/o enclosures)